

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

TRAVELERS PROPERTY CASUALTY
COMPANY OF AMERICA,

Plaintiff,

v.

WALSH CONSTRUCTION COMPANY
II, LLC, ARCH SPECIALTY
INSURANCE COMPANY,

Defendants.

WALSH CONSTRUCTION COMPANY
II LLC,

Third Party Plaintiff,

v.

GREENWICH INSURANCE
COMPANY,

Third Party Defendant.

CASE NO. 2:22-CV-589-RSM-DWC

**ORDER ADOPTING REPORT AND
RECOMMENDATION**

The Court, having reviewed the Report and Recommendation of Magistrate Judge David W. Christel, objections to the Report and Recommendation, the stipulated notice at Docket #83, and the remaining record, hereby FINDS and ORDERS:

- 1 (1) Travelers and Walsh stipulate that the issue in their Motions at Dkts. #32 and #48
2 concerning whether Travelers has an ongoing duty to defend Walsh is “potentially
3 moot” now that Walsh has been voluntarily dismissed in the underlying lawsuit.
4 The Court agrees and finds that this is a valid basis to deny Travelers’ Motion and
5 to grant in part Walsh’s Motion. This is consistent with the recommended outcome
6 of the Report and Recommendation at Dkt. #75. The Court finds that Travelers’
7 Objections do not raise a genuine dispute as to a material fact regarding Arch’s
8 Motion for Summary Judgment. Walsh’s Objections fail to demonstrate that
9 Travelers owes any pre-acceptance defense costs as a matter of law based on the
10 available evidence. Given these findings, the Court ADOPTS the Report and
11 Recommendation at Dkt. #75.
- 12 (2) Travelers’ Motion for Partial Summary Judgment (Dkt. #32) is denied;
13 Greenwich’s Motion for Partial Summary Judgment (Dkt. #49) is denied; Walsh’s
14 Motion for Partial Summary Judgment related to Travelers (Dkt. #48) is granted-
15 in-part and denied-in-part. The Court finds the issue of Travelers’ duty to defend
16 Walsh as an additional insured going forward is moot. However, Walsh’s request
17 for a declaration stating Travelers’ duty to defend includes any defense costs
18 incurred between the initiation of the underlying action and Travelers’ acceptance
19 of Walsh’s tender with a reservation of rights is denied; Walsh’s Motion for Partial
20 Summary Judgment as to Greenwich (Dkt. #44) is granted. Greenwich’s request
21 for a Rule 56(d) continuance is denied; and Arch’s Motion for Summary Judgment
22 (Dkt. #36) is granted.
- 23 (3) Arch is dismissed from this action without prejudice.
- 24 (4) The Clerk is directed to send copies of this Order to counsel for the parties and to
the Hon. David W. Christel.

DATED this 7th day of February, 2024.



RICARDO S. MARTINEZ
UNITED STATES DISTRICT JUDGE